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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 BERNARD RHODES,

11 Petitioner,

No. CIV S-04-2250 JAM GGH P

12 vs.

13 MIKE KNOWLES,

14 Respondent.

ORDER

15 \_\_\_\_\_/  
16 On March 11, 2008, this court ordered an evidentiary hearing to be held regarding  
17 whether insufficient evidence supports petitioner's conviction for DVI 02-1755 because he did  
18 not receive a priority ducat and his conviction for DVI 02-2048 because the reporting employee  
19 was not authorized to perform the DNA test, particularly in his office. Counsel was appointed  
20 for petitioner for purposes of investigating, preparing for and conducting the pending evidentiary  
21 hearing by Order, filed on March 28, 2008. Present counsel was substituted in as counsel in this  
22 case by Order, filed on April 14, 2008.

23 The court ORDERS that the evidentiary hearing is now set for August 4, 2008, at  
24 10:00 a.m., and makes the following additional ORDERS with respect to the impending  
25 evidentiary hearing:

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1           A. Witnesses

2           On or before ten days prior to the hearing the parties shall provide witness lists,  
3 including addresses and telephone numbers, to opposing counsel.

4           Each party may call any witnesses designated by the other.

5           1. No other witness will be permitted to testify unless:

6               a. The party offering the witness demonstrates that the witness is for the  
7 purpose of rebutting evidence which could not be reasonably anticipated  
8 prior to the evidentiary hearing.

9               b. The witness was discovered after the exchange of witnesses and the  
10 proffering party makes the showing required in “2,” below.

11          2. If not timely designated within the ten day period prior to the evidentiary  
12 hearing, the parties shall promptly inform the court and opposing parties of the  
13 existence of the unlisted witnesses so that the court may consider at the  
14 evidentiary hearing whether the witnesses shall be permitted to testify. The  
15 witnesses will not be permitted unless:

16               a. The witnesses could not reasonably have been discovered prior to the  
17 exchange of witness lists;

18               b. The court and the opposing party were promptly notified upon  
19 discovery of the witnesses;

20               c. If time permitted, the party proffered the witnesses for deposition; or

21               d. If time did not permit, a reasonable summary of the witnesses’  
22 testimony was provided to the opposing party.

23          3. On or before twenty days prior to the hearing, the parties shall designate their  
24 expert witnesses, if any; on or before thirty days prior to the hearing, movant shall provide  
25 respondent and respondent shall provide movant, with the report of each party’s expert  
26 witness(es) in compliance with Fed. R. Civ. P. 26;

1           B. Exhibits, Schedules and Summaries

2           Both parties shall exchange copies of their exhibits twenty days prior to the  
3 evidentiary hearing. Any objections to exhibits may be raised at the hearing.

4           Movant will use numbers to mark exhibits; respondents will use letters.

5           1. No other exhibits will be permitted to be introduced unless:

6                 a. The party proffering the exhibit demonstrates that the exhibit is for the  
7                 purpose of rebutting evidence which could not have been reasonably  
8                 anticipated, or

9                 b. The exhibit was discovered after the exchange of exhibits and the  
10                proffering party makes the showing required in Paragraph “2 ” below.

11          2. If not timely exchanged within the fifteen day period prior to the evidentiary  
12          hearing, the parties shall promptly inform the court and opposing party of the  
13          existence of such exhibits so that the court may consider their admissibility at the  
14          evidentiary hearing. The exhibits will not be received unless the proffering party  
15          demonstrates:

16                a. The exhibits could not reasonably have been discovered earlier;

17                b. The court and the opposing party were promptly informed of their  
18                existence; or

19                c. The proffering party forwarded a copy of the exhibit(s) (if physically  
20                possible) to the opposing party. If the exhibit(s) may not be copied the  
21                proffering party must show that he has made the exhibit(s) reasonably  
22                available for inspection by the opposing party.

23          The parties are directed to each bring an “exhibit book” containing copies of their  
24          exhibits to the evidentiary hearing. The “exhibit book” is for bench use during trial.

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1 C. Miscellaneous

2 Counsel shall make the appropriate writ ad testificandum filings if the presence of  
3 movant or any other incarcerated witness is desired. Petitioner shall file these writs at least thirty  
4 days prior to the hearing. The parties shall otherwise make their own arrangements for the  
5 attendance of non-incarcerated witnesses.

6 DATED: 05/02/08

/s/ Gregory G. Hollows

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GREGORY G. HOLLOWS  
UNITED STATES MAGISTRATE JUDGE

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